

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Petition for)	
Redetermination of:)	
)	DOCKET NO. 17715
[Redacted])	
)	DECISION
Petitioner.)	
_____)	

[Redacted] (taxpayer) sells windows, both as a retailer and a contractor improving real property. On the return for the second quarter of 2003, filed on July 20, the taxpayer took an adjustment for the additional one percent (1%) sales tax rate increase that went into effect on May 1, 2003.

The total amount of the adjustment was \$780.61. The Sales Tax Audit Section of the Idaho State Tax Commission reviewed the taxpayer's refund claim and allowed an adjustment totaling \$590.28. The Commission sent a statement of changes in sales and use tax computation on October 23, 2003. The taxpayer filed a protest and request for redetermination on October 28, 2003. The Commission issued a Notice of Deficiency Refund Denial on November 3, 2003 for \$190.33 plus \$1.77 interest for a total of \$192.10. The taxpayer's bookkeeper, [Redacted], Commissioner Sam Haws, and [Redacted] held an informal hearing by telephone on January 8, 2004.

The adjustment claimed on the July return was made pursuant to Idaho Code § 63-3640. The 2003 legislature enacted House Bill 400, which raised the sales tax rate from 5% to 6%. The legislature also enacted House Bill 452, which created a new statute, Idaho Code § 63-3640. This statute states:

63-3640. Contracts Entered Into Before Effective Date of Increased Tax. -- (1) Commencing May 1, 2003, and ending June 30, 2005, the purchase, use, storage or other consumption of tangible personal property which is otherwise subject to the taxes imposed by this chapter by persons defined in section 63-3609(a), Idaho Code,

shall be exempt from one cent (1¢) of the taxes imposed by sections 63-3619 and 63-3621, Idaho Code, if:

- (a) The tangible personal property is purchased, used, stored or otherwise consumed for incorporation into real property; and
- (b) The tangible personal property is purchased, used, stored or otherwise consumed in regard to a project performed by such person pursuant to a qualified contract; and
- (c) The taxpayer claims the exemption in the manner provided by subsection (3) of this section.

(2) As used in this section, the term "qualified contract" means a contract which:

- (a) Is a written contract; and
- (b) Was in effect on April 15, 2003, or was submitted for bid or bid in written form on or before April 15, 2003, and subsequently became a written contract; and
- (c) Was negotiated or bid based upon the sales or use tax being five percent (5%); and
- (d) Requires the cost of the sales or use tax to be borne by the contractor.

(3) A person entitled to the exemption granted in subsection (1) of this section may submit a claim for refund to the state tax commission for the amount of one cent (1¢) of the tax imposed by sections 63-3619 and 63-3621, Idaho Code, if it has actually been paid by him. The claim for refund shall include:

- (a) A copy of a written contract which is a qualified contract; and
- (b) A detailed invoice prepared by the seller showing all items of tangible personal property purchased by the claimant, the sale of which is subject to the exemption granted in subsection (1) of this section; and
- (c) A document signed by the purchaser certifying that the tangible personal property shown on the invoice required by subsection (3)(b) of this section has in fact been used by him on the project to which the qualified contract relates.

(4) Upon receipt of the claim for refund, the state tax commission shall review the claim and, if it finds it to be proper, shall pay the refund together with interest from the date that the claim was filed at the rate established by section 63-3045, Idaho Code, within thirty (30) days from the date the claim was received by the commission.

(5) The use or incorporation into real property of any tangible personal property upon which the exemption provided by subsection (1) of this section has been claimed pursuant to any contract other than a qualified contract shall be a misdemeanor.

(6) In addition to the criminal penalties provided by subsection (5) of this section, the use or incorporation into real property of

tangible personal property upon which the exemption provided by subsection (1) of this section has been claimed pursuant to any contract which is not a qualified contract shall subject the user to a penalty of three (3) times the sales or use tax otherwise due under this chapter to be enforced and collected as provided by sections 63-3634 and 63-3635, Idaho Code.

(7) In the case of a retailer who makes sales of tangible personal property to any person entitled to the exemption granted in subsection (1) of this section who is for any reason unable to collect one cent (1¢) of the tax imposed by sections 63-3619 and 63-3621, Idaho Code, from the purchaser, the retailer shall be entitled to claim the refund otherwise available to the purchaser. The claim for refund shall be filed in the manner prescribed by subsection (3) of this section. Nothing in this subsection shall excuse the retailer from reporting sales and use taxes at the full statutory rate on all taxable sales made during the period to which his sales or use tax return relates. If a refund claim is filed concurrently with the return, the refund claimed may be credited against the tax due on the return. Any retailer who claims a refund for any taxes actually collected from the purchaser shall be subject to a penalty of three (3) times the sales or use tax refund improperly claimed to be enforced and collected as provided by sections 63-3634 and 63-3635, Idaho Code. (Emphasis added.)

The orders for the sales for which the refund was denied in this case were all placed between April 16 and April 30 of 2003. The taxpayer argues that it was not informed of the rate increase until April 28, 2003. The statute in this case is clear. In order to qualify for the exemption from the rate increase, the contract must have been in effect on April 15, 2003, or submitted for bid or bid in written form on or before April 15, 2003. The taxpayer does not dispute that the bids for the contracts in question were made after April 15. Statutory tax exemptions exist only by legislative grace and should be strictly construed against the taxpayer, Leonard Construction Co. v. State ex rel. State Tax Comm'n, 96 Idaho 893, 539 P.2d 246 (1975); Kwik Vend, Inc. v. Koontz, 94 Idaho 166, 483 P.2d 928 (1971). The Tax Commission is not able to disregard the express terms of the statute.

WHEREFORE IT IS ORDERED and THIS DOES ORDER that the adjustment to the sales tax return of [Redacted].[Redacted]for the second quarter of 2003 is DENIED. IT IS FURTHER

ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, and interest
(calculated through February 15, 2004):

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$190	\$5	\$195

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's rights to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2004, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
[REDACTED]

Receipt No.
